

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**EDISON ZORILLA, Individually and on
behalf of all others similarly situated,** §
§
§

Plaintiff

vs.

UBER TECHNOLOGIES, INC., §
§
§
§
§
§

Defendant.

C.A. NO. 4:16-CV-615

**SECOND JOINT MOTION FOR AN EXTENSION OF LIMITED DISCOVERY AND
BRIEFING DEADLINES RELATED TO CLASS CERTIFICATION**

Defendant Uber Technologies, Inc. (“Defendant”) and Plaintiffs Edison Zorilla, Morris Taibel, and Erick Castillo (“Plaintiffs”) file this Second Joint Motion for an Extension of Limited Discovery and Briefing Deadlines Related to Class Certification, and respectfully request that all class certification discovery and related briefing deadlines be enlarged for a period of seventy-five (75) days. In support of this Motion, the Parties respectfully show the Court as follows:

1. On October 24, 2016, the Court entered an Order setting the limited class certification discovery deadline for both Parties at February 3, 2017.¹ This Order also set the deadline for Defendant to respond to Plaintiffs’ Motion for Class Certification as February 24, 2017.² These deadlines were extended following the Parties’ joint motion for an extension to March 6, 2017 and March 27, 2017, respectively.³

2. On November 11, 2016, Defendant moved to dismiss the claims in Plaintiffs’ Second Amended Complaint under Fed. R. Civ. P. 12(b)(6) arguing, *inter alia*, that Plaintiffs’

¹ See Dkt. No. 71.

² *Id.*

³ See Dkt. No. 87.

California statutory and common law claims were not viable in Texas.⁴ Before Plaintiffs filed their response to Defendant's Motion to Dismiss, the Parties began class certification discovery so that Defendant can properly respond to Plaintiffs' motion to certify a class based on the claims in Plaintiffs' Second Amended Complaint.

3. Plaintiffs filed their response to Defendant's Motion to Dismiss on January 4, 2017.⁵ In their response, Plaintiffs acknowledge that their extra-territorial California claims are not properly before the Court.⁶

4. Based on this acknowledgement, Defendant moved to strike Plaintiffs' Motion for Class Certification, arguing that Plaintiffs cannot seek to certify a class based on non-viable California claims.⁷

5. Plaintiffs oppose Defendant's Motion to Strike Plaintiffs' Motion for Class Certification, but acknowledge that two of the named Plaintiffs—Edison Zorilla and Morris Taibel—executed arbitration agreements, and that the issue of whether those arbitration agreements are enforceable has been decided in the affirmative by numerous district courts and the Ninth Circuit Court of Appeals.⁸

6. Plaintiffs intend to file a Motion for Leave to File a Third Amended Complaint removing Plaintiffs Zorilla and Taibel as named Plaintiffs and alleging causes of action under Texas law by no later than Thursday, February 16, 2017.⁹ Plaintiffs further intend to add two new Plaintiffs to the lawsuit as class representatives. Because these individuals have not yet

⁴ See Dkt. No. 74.

⁵ See Dkt. No. 81, pp. 9-10.

⁶ *Id.*

⁷ See Dkt. No. 83.

⁸ See Dkt. No. 91, p. 2.

⁹ By joining in this Motion, Defendant does not waive any arguments with respect to Plaintiffs' anticipated motion for leave to file a third amended complaint, and Defendant reserves the right to oppose such motion.

been identified by Plaintiffs, it is impossible for the Parties to conduct class certification discovery with respect to these two Plaintiffs.

7. Plaintiffs intend to file an Amended Motion for Class Certification by no later than 5 business days after the Court rules on Plaintiffs' anticipated Motion for Leave to File a Third Amended Complaint.

8. The Parties recognize that it is impractical to continue class certification discovery when two of the named Plaintiffs have not yet been identified and the anticipated causes of action under Texas law are not yet before the Court. Continuing class certification discovery under these circumstances would result in a significant waste of both Parties' resources and the Court's time.

9. The Parties jointly propose that the deadlines for class certification discovery and related briefing be extended for a period of seventy-five (75) days to allow Plaintiffs sufficient time to file a Motion for Leave to File a Third Amended Complaint and an Amended Motion for Class Certification.

10. The Parties respectfully request that following a ruling on Plaintiffs' Motion for Leave to File a Third Amended Complaint, the Court set a status conference to confer with the Parties on pending motions and deadlines.

11. The Parties do not bring this motion for purposes of delay, but so that justice may be done. No other deadlines have been set in this matter, so granting the relief requested herein should not affect the Court's docket.

For these reasons, the Parties respectfully request the Court enter an Order enlarging all class certification discovery and related briefing deadlines for a period of seventy-five (75) days, and further Order the Parties to appear at a status conference following a ruling on Plaintiffs'

Motion for Leave to File a Third Amended Complaint.

Dated February 10, 2017

Respectfully submitted,

Of Counsel:
Kimberly R. Miers
State Bar No. 24041482
Federal I.D. No. 674452
Jonathan G. Rector
State Bar No. 24090347
Federal I.D. No. 2376006
LITTLER MENDELSON, P.C.
A PROFESSIONAL CORPORATION
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, Texas 75201
214.880.8100 (Telephone)
214.880-0181 (Telecopier)
kmiers@littler.com
jrector@littler.com

Allison E. Moore
State Bar No. 24077616
Federal I.D. No. 1512930
LITTLER MENDELSON, P.C.
A PROFESSIONAL CORPORATION
100 Congress Avenue
Suite 1400
Austin, TX 78701
512.982.7250 (Telephone)
512.982.7248 (Telecopier)
amoore@littler.com

/s/ Jonathan G. Rector

Steven R. McCown (Attorney-in-Charge)
State Bar No. 13466500
Federal I.D. No. 14773

LITTLER MENDELSON, PC
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, TX 75201.2931
214.880.8100
214.880.0181 (Fax)

***Physical address – For Steven R. McCown
and Allison E. Moore only***
100 Congress Ave.
Suite 2000
Austin, TX 78701
512.982.7250
214.880.0181 (Fax)

ATTORNEYS FOR DEFENDANT
UBER TECHNOLOGIES, INC.

and

LAW OFFICES OF KEVIN R. MICHAELS, P.C.

/s/ Kevin R. Michaels (w/ permission)

Kevin R. Michaels (Attorney-in-Charge)

State Bar No. 00784598

888 W. Sam Houston Pkwy. S., Suite 226

Houston, Texas 77042

Telephone: 281-496-9889

Faxsimile: 281-496-4211

kmichaels@michaelslaw.net

ATTORNEYS FOR PLAINTIFF

Of Counsel:

WILLIAMSON, SEARS & RUSNAK, LLP

Ross A. Sears II

State Bar No. 17960011

4310 Yoakum Boulevard

Houston, Texas 77006

Telephone: 713-223-3330

Facsimile: 713-223-0001

ross@wsrlawfirm.com

KLITSAS & VERCHER P.C.

Loren G. Klitsas

Federal Bar No. 16451

550 Westcott, Suite 550

Houston, Texas 77007

Telephone: 713-862-1365

Facsimile: 713-862-1465

klitsas@kv-law.com

THE GOLDBERG LAW OFFICE, PLLC

Daniel J. Goldberg

State Bar No. 24052856

2006 Commonwealth Street

Houston, Texas 77006

Telephone: 713-942-0600

Facsimile: 713-942-0601

DJG@LawGoldberg.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded filed via ECF with the court, on this the 10th day of February 2017, to the following counsel:

Kevin R. Michaels
Law Offices of Kevin R. Michaels, P.C.
888 W. Sam Houston Pkwy. S., Suite 226
Houston, Texas 77042
Telephone: 281-496-9889
kmichaels@michaelslaw.net

Ross A. Sears, II
Williamson, Sears & Rusnak, LLP
4310 Yoakum Boulevard
Houston, Texas 77006
Telephone: 713-223-3330
ross@wsrlawfirm.com

Loren G. Klitsas
Klitsas & Vercher P.C.
550 Westcott, Suite 550
Houston, Texas 77007
Telephone: 713-862-1365
klitsas@kv-law.com

Daniel J. Goldberg
The Goldberg Law Office, PLLC
2006 Commonwealth Street
Houston, Texas 77006
Telephone: 713-942-0600
DJG@LawGoldberg.com

ATTORNEYS FOR PLAINTIFF

I further certify that a true and correct copy of the above and foregoing document has been served via certified mail, return receipt requested, on this the 10th day of February 2017, to the following:

Phillip D. Haskett
P.O. Box 1941
League City, Texas 77574

/s/ Jonathan G. Rector
Jonathan G. Rector